STATE OF MICHIGAN

COURT OF APPEALS

KATHRYN HEINRICH, JANE LUCAS and JAMES DOROTHY,

Plaintiffs-Appellees,

v

JACQUELINE CASEY,

Defendant-Appellant,

and

EPWORTH ASSEMBLY,

Defendant.

UNPUBLISHED
May 16, 1997

No. 190670
Mason Circuit Court
LC No. 94-010353-CZ

Before: Griffin, P.J., and Doctoroff and Markman, JJ.

PER CURIAM.

This case involves a dispute amongst three sisters[1] regarding the ownership of a vacation home known as Sewanee cottage, which was originally purchased by the parties' grandparents. Defendant Jacqueline Casey appeals as of right from a judgment for plaintiffs, in which defendant[2] was ordered to either sell her interest in Sewanee cottage to plaintiffs for $86,620.95 or, if plaintiffs decided not to purchase the cottage, then upon its sale to a third party, to give plaintiffs two-thirds of the proceeds less $21,620.95. We affirm.

Sewanee cottage is located in Ludington, Michigan on property called Epworth Heights, which is owned by Epworth Assembly. Epworth Assembly is a summer resort association that has existed for over one hundred years. The members of the Assembly own about 210 cottages that are located at Epworth Heights. The Assembly owns all the real property at Epworth Heights and grants renewable fifteen year leases to its members. The Assembly requires that only one individual may hold a lease to a lot at Epworth Heights; however, it recognizes that multiple family members may have equal rights of ownership in and use of a cottage.

Sewanee cottage was transferred to Sarah Jane Gregg by her father (the parties' grandfather) in 1961. Gregg, who died on December 5, 1988 at the age of eighty-four, was the aunt of defendant Casey, as well as the aunt of plaintiffs Kathryn Heinrich and Jane Lucas. The sisters had always understood that Gregg would someday transfer equal interests in the cottage to each of them, and Gregg stated this intent in a letter and other documents. In 1988, Gregg transferred Sewanee cottage to defendant "due to the fact that the Epworth Assembly requires that such property be titled in only one person's name." After this transfer, Gregg entered into a Memorandum of Agreement, dated June 22, 1988, which gave Gregg the absolute right of control over the cottage during her lifetime and provided that during her lifetime, Gregg would continue to be responsible for the expenses of the cottage. The Memorandum of Agreement stated that each of the siblings was to retain "the equal right of use and assume the financial responsibilities equally of this summer cottage." Neither Gregg's will nor a list of her intended dispositions of personal property mentioned Sewanee cottage. At the probate hearings of Gregg's estate, neither Heinrich nor Lucas questioned the ownership of the cottage.

In November 1994, defendant decided to sell the cottage and notified Malinda Bell, Heinrich's daughter, and James Dorothy, Lucas' son, of this decision, offering to sell the cottage to them for $185,000. Bell and Dorothy, who believed that both Heinrich and Lucas owned one-third interests in the cottage, refused but offered to purchase defendant's one-third interest in the cottage. Defendant declined and prepared to sell Sewanee cottage, as furnished, to a third party for $195,000. When plaintiffs discovered this, they obtained a preliminary injunction to prevent her from doing so. They then filed suit, requesting a finding that defendant held title to Sewanee cottage as a constructive trustee of plaintiffs.

Defendant contends that the evidence overwhelmingly established that Gregg intended to give defendant sole ownership of the cottage. In making this argument, defendant relied on (1) the documents that Gregg signed in transferring Sewanee's lease to defendant, (2) Gregg's will, (3) a plaque given to defendant by Lucas, which indicated that defendant was the owner of the cottage, (4) a letter to Gregg from Bell, in which Bell asked Gregg to inform the family if she intended to give the cottage to defendant, (5) the testimony of the administrator of Gregg's estate, who concluded that Gregg had given the cottage to defendant, and (6) the testimony of two of Gregg's friends, which indicated that Gregg wanted defendant to own the cottage. We do not find defendant's argument persuasive, and we agree with the trial court's finding that Gregg intended that the sisters share equal ownership interests in the cottage.

Although defendant correctly notes that Gregg transferred the membership to her and that Gregg's will contained no disposition of the cottage, defendant ignores Gregg's letter to Bell in which Gregg explicitly stated that she had not given the cottage to defendant, that defendant was the nominal owner of the cottage and that plaintiffs' interests in the cottage would be protected. By considering this letter in conjunction with the documentary evidence on which defendant relies, the trial court concluded that Gregg had transferred the lease of the cottage to defendant in name only, and with the intent that the three sisters would share equal interests in Sewanee. This conclusion was further supported by defendant's unsigned, undated will which explained defendant's intent in a way that was consistent with Gregg's letter to Bell. Although defendant disputes the validity of the will, the trial court found that the

document was "clearly intended to assuage" plaintiffs' concerns regarding their future interest in the cottage.[3] We agree with the trial court and find that its conclusions were consistent with the evidence presented.

Defendant is correct in noting that the administrator concluded that Gregg transferred the cottage to defendant. However, defendant ignores the fact that the administrator had only the evidence of the transfer of the lease to defendant on which to base this conclusion. The administrator did not have a discussion with plaintiffs, and he was not privy to Gregg's letter to Bell. Moreover, in asserting that the testimony of Gregg's friends indicated that Gregg intended to give the cottage to her, defendant ignores the evidence of Gregg's belief that the Assembly prohibited joint ownership of cottages. Thus, although Gregg may have intended that defendant be the nominal owner of Sewanee, in order to satisfy the Assembly's rules, the evidence indicated that Gregg intended that the siblings each retain an equal interest in the cottage. Based on this evidence, we hold that the findings of the trial court were not clearly erroneous.

Defendant also contends that Gregg had given her the cottage through a valid and irrevocable inter vivos gift. However, because this issue was raised for the first time on appeal and was not addressed by the trial court, it is unpreserved and we decline to address it. *People v Grant*, 445 Mich 535, 546; 520 NW2d 123 (1994). Even if we were to address this issue, we would find that Gregg never intended to give the cottage to defendant, and thus there could have been no valid inter vivos gift. *Children of the Chippewa, Ottawa & Potawatomy Tribes v Regents of the University of Michigan*, 104 Mich App 482, 489; 305 NW2d 522 (1981).

Defendant next asserts that the trial court erred in finding that plaintiffs' claims were not barred by the statute of limitations or laches. Because this suit was brought in equity, the six year statute of limitations for actions involving personal property would not bar this suit. *Badon v General Motors Corp*, 188 Mich App 430, 435; 470 NW2d 436 (1991). However, the statute of limitations but may be used as a guide in determining whether laches applies. *Id.* Laches "is applicable in cases in which there is an unexcused or unexplained delay in commencing an action and a corresponding change of material condition that results in prejudice to a party." *Public Health Dep't v Rivergate Manor*, 452 Mich 495, 507; 550 NW2d 515 (1996).

The cause of action arose in this case when plaintiffs learned that defendant had acted in a manner that exceeded the scope of her one-third interest in the cottage, i.e., when she decided to sell the cottage to a third party. Since plaintiffs filed this action only days after being notified of this decision, there was no unexplained delay in bringing an action, and no prejudice to defendant. Thus, the trial court did not err in determining that the doctrine of laches did not bar this suit.

In accordance with its finding that Gregg intended that the sisters share the cottage and that defendant was the nominal owner, the trial court imposed a constructive trust in which defendant was the constructive trustee of the cottage for the benefit of plaintiffs. Defendant contends that the trial court erred in imposing a constructive trust. We disagree. A constructive trust may be imposed if the plaintiff establishes that the transferor intended for the plaintiff to benefit from the transfer of the property.

Cerling v Hedstrom, 51 Mich App 338, 344; 214 NW2d 904 (1974). The purpose of a constructive trust is to do equity or to prevent unjust enrichment. *Kammer Asphalt v East China Twp*, 443 Mich 176, 188; 504 NW2d 635 (1993). Thus, the imposition of a constructive trust may be appropriate where "property has been obtained through fraud, misrepresentation, concealment, undue influence, duress, taking advantage of one's weaknesses, or necessities, or any other similar circumstances which render it unconscionable for the holder of the legal title to retain and enjoy the property." *Id.*

In this case, the trial court correctly found that Gregg intended that the three sisters share ownership of the cottage, and additionally found that defendant was aware of Gregg's intent, yet unconscionably withheld the cottage from plaintiffs, claiming full ownership for herself. Since these findings comport with the evidence presented at trial, they are not clearly erroneous. In accordance with the trial court's findings, it would be unconscionable to allow defendant to obtain sole ownership of the cottage. Accordingly, we affirm the trial court's imposition of a constructive trust.

Defendant also argues that the trial court erred in calculating damages. Defendant contends that without explanation, the trial court determined that plaintiffs' amount of unpaid expenses was $21,620.95. Defendant contends that this figure that did not comport with her calculation of unpaid expenses and interest at $29,421.87, which she set forth in arguing that her interest in the cottage had a value of $94,421.87. However, at the trial court's request, defendant recalculated the value as $88,783.05 after charging herself rent for usage of the cottage for each of the six years since Gregg died. In addition, the court decided that, contrary to defendant's assertion, plaintiffs did not owe $2,162.10 in interest for unpaid expenses for 1995 because such payments were not yet due at the time of trial. Based on these revised figures, the court determined that defendant's interest in the cottage equaled $86,620.95. At the trial court's request, defendant had provided the figures on which the court relied. Thus, defendant has no basis for a complaint regarding the court's calculation of damages.

Finally, defendant argues that the trial court improperly forced her to sell her interest in the cottage to plaintiffs. Because she did not cite any authority to support this proposition, we decline to address it. *In re Pensions of 19th District Judges Under Dearborn Employees Retirement System*, 213 Mich App 701, 707; 540 NW2d 784 (1995). Even if we were to address this issue, we would find it to be without merit. This dispute began when defendant sought to sell the cottage to a third party. Thus, she cannot now claim that it was error that her request was granted.

Affirmed. Plaintiffs being the prevailing parties, they may tax costs pursuant to MCR 7.219.

/s/ Richard Allen Griffin
/s/ Martin M. Doctoroff
/s/ Stephen J. Markman

[1] Although plaintiff James Dorothy was not a sibling to the other parties, he was acting on behalf of his mother, plaintiff Jane Lucas, who was incapacitated with Alzheimer's Disease.

[2] Although Epworth Assembly was a defendant in the trial court, it is not a party to this appeal. Thus, in this opinion, "defendant" refers solely to Jacqueline Casey.

[3] Defendant sent copies of her unsigned, undated will to the other sisters while Gregg was still living. The trial court found that this document was drafted under the supervision of Gregg in order to assure plaintiffs that their rights to the cottage would be protected. The trial court found that it was a "misrepresentation" for defendant to send copies of the will to her sisters and then later deny the document's weight or meaning based on the unavailability of a signed copy.